IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1480 OF 2006

JITESHKUMAR @ JITESH @ TONY)
GHANSHYAMDAS CHUG R/o Rajlaxmi)
Palace, Gandhi Road, Ulhas Nagar
Camp No. 5, Ulhas Nagar,)
District Thane.)
Atpresent detained at Nashik)
Road Central Prison, Nashik) .. PETITIONER

Versus

1. SHRI D. SHIVANANDAN,)
The Commissioner of Police,)
Thane.)

2. THE STATE OF MAHARASHTRA)

3. THE SUPERINTENDENT OF JAIL)
Nashik Road Central Prison,)
Nashik.) .. RESPONDENTS

Mr. Prakash Naik for the petitioner

Mrs. A. S. Pai, APP

CORAM:-SMT. RANJANA DESAI &

ANOOP V. MOHTA, JJ.

DATED:-8/3/2007

ORAL JUDGMENT:-(Per Smt. Ranjana Desai, J.)

. The petitioner is detained under the order of detention dated 7/4/06 issued by the 1st respondent under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short), with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The order of detention along with the grounds of detention and the material in support thereof was served on the petitioner on 8/4/06.

2. The order of detention is based on three cases. The first case is C.R. No. 1-103/2005 in respect of an incident which had taken place on 15/10/05. In that case the offence alleged against the

petitioner is under Section 324 read with 34 of the Indian Penal Code ("IPC" for short). The petitioner was arrested in that case on 16/10/05 and he was released on bail on 17/10/05.

. The 2nd incident is dated 18/10/05. In respect of this incident C.R. No. 1-104/2005 under Section 324, 323, 427 read with 34 of the I.P.C. came to be registered. The petitioner was arrested in connection with this case on 20/10/05. He was ordered to be released on bail on 21/10/05. He availed of the bail facility on 23-1-05.

. The 3rd incident is dated 18/1/06. In respect of this incident C.R. No. 1-13/2006 was registered under Section 506(II), 323, 427 and 451 read with 34 of the IPC. The petitioner was arrested in this connection on 20/1/06 and was released on bail on 24/1/06. After collecting the documents the sponsoring authority submitted the proposal on 20-2-06. The detention order was issued on 7/4/06. The said detention order is challenged in this petition.

3. We have heard Mr. Naik, the learned counsel appearing for the petitioner at some length. He

has assailed the impugned order of detention on three counts. He submitted that the incidents on which reliance is placed by the detaining authority affect only law and order and not public order and, therefore, it was wrong on the part of the detaining authority to issue the impugned order on the basis of the said incidents.

4. Mr. Naik then urged that the petitioner does not understand Marathi. He is Sindhi. However, translations of the relied upon documents in Marathi were supplied to the petitioner. He ought to have been supplied Sindhi translations. Therefore, there is a violation of the petitioner's right under Article 22(5) of the Constitution of India and hence on that count the detention order should be set aside.

5. Lastly Mr. Naik urged that order of detention must be set aside on the ground of utter non-application of mind of the detaining authority. He pointed out that in paragraph 5 of the affidavit, the detaining authority has stated that the material placed before him included the statements of incamera witnesses and he had placed reliance on the same. Mr. Naik contended that,

however no incamera statements have been supplied to the petitioner. Mr. Naik submitted that, therefore, it is obvious that the relied upon incamera statements have not been supplied to the petitioner. The detaining authority has relied upon some extraneous material which has not been supplied to the petitioner and on this count the order of detention must be set aside. In this connection, the learned counsel relied on the judgment of the Supreme Court in **Icchu Devi Choraria v. Union of India, AIR 1980 SC 1983**.

6. In our opinion, the order of detention must be set aside on the above ground and hence it is not necessary to deal with the other contentions raised by the petitioner.

7. Mrs. Pai, learned APP strenuously contended that in paragraph 8 of the affidavit of the detaining authority, the detaining authority has clearly stated that he has issued detention order against the detenu on the basis of three incidents and that on the basis of these three incidents he was subjectively satisfied that the activities of the detenu were prejudicial to the maintenance of public order and hence he issued the order of

detention against the detenu in order to prevent him from further indulging in such prejudicial activities in future.

8. The learned APP further pointed out that in the grounds of detention itself it is mentioned by the detaining authority that copies of the documents placed before him and on which he had placed reliance and on the basis of which he had formed his subjective satisfaction are annexed. The learned APP submitted that the documents supplied to the petitioner are the only documents on which reliance was placed and those documents having been supplied to the petitioner, there is no violation of his right under Article 22(5) of the Constitution of India.

9. The learned APP urged that in view of the statement made in the grounds of detention and in paragraph 8 of the affidavit and at several other places in the affidavit this court should not set aside the order of detention on the ground of non-application of mind of the detaining authority.

10. The learned APP contended that inadvertently an erroneous statement is made in the affidavit and

the detaining authority may be allowed to file an affidavit rectifying the mistake.

11. We are unable to grant this request. The order of detention is dated 7/4/06. Rule was issued on this petition on 17/7/06 and it was made returnable after four weeks. The petitioner is in custody pursuant to the detention order for more than 11 months. It is for the first time when this writ petition is being finally heard and this statement in the affidavit is pointed out by the petitioner's counsel, a request is made to this court that the detaining authority may be given a chance to file an affidavit correcting the mistake. It was open to the detaining authority to request this court to allow him to file an affidavit earlier. Affidavit is dated 14/8/06. We feel that, if not at the stage of swearing the affidavit at least, later on the mistake should have been noted and an appropriate request ought to have been made at the earliest. It is only at the fag end of the detention period and, in the midst of the final hearing of the petition that this request is made.

12. Law in this regard is very well settled. In preventive detention a person is detained without

trial and the law expects that whatever safeguards are available to the detenu must be meticulously adhered to.

13. In **Icchu Devi's case** the Supreme Court has clearly observed that, if there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu because being incorporated in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them.

14. If the detaining authority makes a solemn affidavit that he has relied upon certain documents which were placed before him and passed the order of detention on the basis thereof, those documents must necessarily be supplied to the detenu. We may quote the relevant paragraph of the affidavit of the detaining authority.

. "I say that the Senior Inspector of Police, Vithalwadi Police Station, District - Thane submitted a proposal on 20/2/205 for detention of one Jitendrakumar (a) Jitesh (a) Tony Ghanshamdas

Chugh under the M.P.D.A. Act to the Commissioner of Police, Thane. I, the Commissioner of Police and the Detaining Authority carefully considered and scrutinized the material placed before me and was subjectively satisfied that the activities of the said person were prejudicial to the maintenance of Public Order. I was further satisfied that he is a dangerous person within the meaning of the M.P.D.A. Act. I was further satisfied that the said person was acting in a manner prejudicial to the maintenance of Public Order and it was necessary to detain him under the said Act with a view to prevent him from acting in such a manner in future. I was further satisfied that all the material on which I placed reliance was true and genuine. The said material included the statements of incamera witnesses and hence I placed reliance on the same. Hence I issued the Detention Order against the detenu bearing D.O. No. TC/PD/MPDA/06/2006 dated 7/4/2006. The Detention Order, committal order and grounds of detention were served on 8/4/2006 on the detenu. The translation of the Detention Order, Committal Order, Grounds of detention and compilation of documents along with their translation in the language known to the detenu i.e. Marathi was

served on him on 8/4/2006. The detenu's signature was obtained as acknowledgement of receipt of the documents."

15. Averments in this paragraph indicate that the material placed before him included incamera statements. He has stated that he was satisfied that the material was true and genuine and hence he had placed reliance on it. Those documents should have been supplied to the petitioner.

16. The inference which will necessarily follow is that the detaining authority has relied upon certain documents which he has not supplied to the petitioner. It was urged that this point is not taken by the petitioner. In our opinion, it is not necessary for the petitioner to squarely take that point. The point is very much evident from the statement made in the affidavit. If it is a mistake it was for the detaining authority to approach this court at the earliest with a request that he may be permitted to rectify the mistake. We cannot assume that it is a mistake.

17. In our opinion, the order of detention suffers from utter non-application of mind. If the

detaining authority relied upon any incamera statements apart from all the documents to which he has made reference in the grounds of detention as he has stated in paragraph 5 of his affidavit, non-supply of these incamera statements violates the petitioner's right under Article 22(5) of the Constitution of India. The order of detention will have to be set aside on that ground. Hence the following order:

. "The order of detention dated 7/4/06 is quashed and set aside. The petitioner Jiteshkumar @ Jitesh @ Tony Ghanshyamdas Chug is ordered to be released forthwith, unless required in any other case.

. In view of the judgment passed in main petition, criminal application No. 52 of 2007 does not survive and is disposed of as such.

. Certified copy expedited."

JUDGE.

JUDGE.

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Mr. Prakash Naik for the petitioner

Mrs. A. S. Pai, APP

CORAM:-SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.

DATED:-8/3/2007

OPERATIVE PART OF THE ORDER:

. For the reasons separately recorded in the Oral Judgment, this court of has passed the following order:

. The order of detention dated 7/4/06 is quashed and set aside. The petitioner is ordered to be released forthwith unless required in any other case.

JUDGE.

JUDGE.